the plaintiff's claim was statute barred and that there had been no such acknowledgment in writing as would have given the defendant the protection of the statute of limitation. The defendant in the lower Court was unrepresented and she did not put in any statement of defence; she did not plead the statue of limitations. There is an obligation imposed by the law of procedure in this country and in England requiring the party relying upon the statute of limitations specifically to plead it. Failure to do so robs him of the value of the statute. It is no part of the duty of the Court to take notice of the statute of limitations unless it is specifically pleaded. It was not pleaded in this case and having regard to the evidence which I have read, I am not of the opinion that this is a case where I could properly exercise my powers of re-opening the matter with a view to varying the judgment of the learned President. In these circumstances the Appeal is dismissed.

Appeal dismissed.

GOVERNMENT OF THE FEDERATION OF MALAYA v. WONG HOI ONN.

[Court of Appeal (Mathew, C.J. (F.M.), Sir Charles Murray-Aynsley, C.J. (Singapore) and Wilson, J.) July 4, 1952]

[Kuala Lumpur — Civil Appeal No. 18 of 1952]

Gaming — Betting and Sweepstakes Duties Ordinance, 1948, ss. 2(2), 3(1), 5 and 7 — Responsibility of promoter — Liability — Test applicable.

The Federal Government claimed $64,472.70 from the defendant, being the duty payable under the Betting and Sweepstakes Duties Ordinance, 1948, on five Sweepstakes conducted during 1950 by an association called the Selangor Health and Strength Association of which the defendant was the President. The learned trial Judge dismissed the claim on the grounds that, "No duty or tax can be charged upon an individual without express words. In this statute I can find no words apt to charge the duty on the privy purse of the promoter. In my opinion, therefore, the plaintiff Government have failed to establish that the defendant is personally indebted to them." The plaintiff Government appealed.

The Court of Appeal allowing the appeal, —

Held, that the responsibility of preparing the statement of accounts and of paying the duty is placed by the Ordinance on the promoter and if the promoter fails to deliver the statements or, with intent to evade the duty, draws up a statement which is false in any material particulars, he is liable to penalties. Under section 3(1) of the Ordinance "the promoter.... shall pay the amount of duty", and under section 6 "the duty required to be paid under the Ordinance shall be a debt due to the Federal Government".

Government of the Federation of Malaya v. Wong Hoi Onn p. 81 ante reversed.

Partington v. Attorney-General[1] applied.

Case referred to :—

(1) *Partington v. Attorney-General* (1869), L.R. 4 H.L. 100.

COURT OF APPEAL, appeal against the decision of Taylor, J., reported at p. 81 *ante*.

Cur. Adv. Vult.

The judgment of the Court was delivered by Mathew, C.J., (F.M.), with which Sir Charles Murray-Aynsley, C.J., (Singapore), and Wilson, J., concurred.

Mathew, C.J. : — The Federal Government is claiming $64,472.70 from the defendant, being the duty payable under the Betting and Sweepstakes Duties Ordinance, 1948, on five sweepstakes conducted during 1950 in the name of the Selangor Health and Strength Association.

The defendant was sued as the promoter of the sweepstakes, and the learned trial judge found on this question as follows :—

"On the evidence I find that at the material period all the affairs of the Association were managed by the defendant as a committee of one, the large clerical staff functioning under his orders and control. I therefore find that though he had the title of President and although there was a separate titular Secretary, the defendant was in fact either the Secretary of the Association (in addition to other duties) or a "similar official".

The learned trial judge dismissed the suit for the following reasons :—

"No duty or tax can be charged upon an individual without express words. In this Statute I can find no words apt to charge the duty on the privy purse of the promoter. In my opinion, therefore, the plaintiff Government have failed to establish that the defendant is personally indebted to them."

The learned trial judge concluded his reasoned judgment with the passage :—

"However that may be, I decide this case on the ground that in my view the duty is not explicity charged on the private purse of the promoter, and as this is the only cause of action pleaded, the Government cannot succeed on this plaintiff. The costs must follow the event."

It is convenient here to examine the relevant sections of the Betting and Sweepstakes Duties Ordinance, 1948. Section 2(2) provides :—

"On every sweepstake promoted by any club, association, or society on the result of a horse race or other race, whether such race takes place in, or outside, the Federation, there shall be charged a duty of twenty per centum of the amount contributed towards such sweepstake."

Section 1 reads :—

"The promoter shall draw up a statement of the amounts received as bets on each race and of the amounts contributed to each sweepstake and shall, as may by the Collector of Stamp Duties in each case be determined, either affix thereto adhesive stamps to the value of the duty chargeable under section 2 of this Ordinance or pay the amount of duty so chargeable in lawful currency of the Federation."

Section 5 provides :—

"The duty required to be paid under this Ordinance shall be a debt due to the Federation Government and shall be recoverable by any of the ways and means in force for the time being for the recovery of debts due to the Government."

Section 7 reads :—

"(1) If the promoter fails to deliver the Statements to the Collector of Stamp Duties as provided in section 3 of this Ordinance he shall be liable to a fine not exceeding five hundred dollars.

(2) If the promoter, with intent to evade the duty chargeable under this Ordinance, draws up a statement referred to in section 3 of this Ordinance, which is false in any material particular he shall be liable to a fine not exceeding one thousand dollars or four times the amount of the duty payable, whichever is higher."

The purpose of the Ordinance is plain; a duty is charged on the amount contributed to a sweepstake. The responsibility of preparing the statement of accounts and of paying the duty is placed by the Ordinance on the promoter. If the promoter fails to deliver the statements or, with intent to evade the duty, draws up a statement which is false in any material particulars, he is liable to penalties. It is on the promoter that the Ordinance places every duty under the Ordinance. The reasons for placing these responsibilities fairly and squarely on the shoulders of promoters of sweepstakes are so obvious as to require no comment. I find myself in some difficulty in understanding the learned trial judge's reference to the "privy purse of the promoter". The only question, to my mind, to be decided is whether the promoter is liable for the payment of the duty and whether, if he fails to do so, he is liable to be sued in debt. Under section 3 (1) of the Ordinance "the promoter ..... shall pay the amount of duty", and under section 6 "the duty required to be paid under the Ordinance shall be a debt due to the Federal Government".

Looking at the Ordinance as a whole, I cannot see how it can be argued that the wording of the Ordinance is not clear and explicit in placing the liability to meet the debt on the promoter. A number of cases have been cited to us by Counsel for the respondent, but with them all the test to be applied is as stated by Lord Cairns in *Partington v. Attorney-General*[1] :—

"If the person sought to be taxed comes within the letter of the law he must be taxed however great the hardship may appear to the judicial mind to be."

The fact that the property of the Selangor Health and Strength Association is now in the hands of the Official Assignee is to my mind an irrelevant consideration in these proceedings. As I view the Ordinance, the promoter, the defendant, is liable for the payment of the duty as a debt due to the Federal Government.

I would accordingly allow this appeal and order that judgment be entered for the appellant against the respondent with costs here and in the Court below, the deposit of $500 in Court to be refunded to the appellant.

Appeal allowed.

SEM HIN PAWNSHOP v. REGINA.

[App. Crim. Juris. (Brown, J.) July 8, 1952]

[Singapore — Magistrate's Appeal No. 69 of 1952]

Pawnbrokers Ordinance (Cap. 216), ss. 27(1) and 28 — Watch unlawfully pawned — Proof of ownership conclusive — Conduct of parties.

In this case the Magistrate ordered the pawnbroker to return a watch, which had been unlawfully pawned, to the owner whose ownership was conclusively proved. Against this order the pawnbroker appealed.

Held, where ownership having been proved, by common law the owner would be entitled to the article unconditionally, however careless he had been. In a case where the conduct of both parties is free from criticism in no circumstances would the Court order the owner to pay a part of the loan; and the innocent pawnbroker must suffer for having taken a risk which is inseparable from his trade.

Cases referred to :—

(1) *Lam Fong Tze v. Rex* (1933) M.L.J. 91.

(2) *Lam Lock v. Rex* (1933) M.L.J. 92.

MAGISTRATE'S APPEAL.

T. W. Ong for the appellant.

A. V. Winslow for the Crown.

Cur. Adv. Vult.

Brown, J. : — This is an appeal by a pawnbroker from an order made by the Magistrate under the provisions of section 28 of the Pawnbrokers Ordinance ordering that a watch, which had been unlawfully pawned, should be returned to the owner.

The facts are simple. The owner of the watch is Mr. Soo Ban Hoe. On the morning of 8th of November 1951 his wife had engaged a new maid-servant, who had been sent to her by her mother. At half past five in the afternoon of that day the family had left the new maidservant in the house alone and had gone out to visit friends. Mr. Soo had left his watch on the bedroom cabinet. Upon his return the watch had disappeared — and so had the maidservant. The watch was found on the following day at the appellant's pawnshop, where it had been pawned for $60. The market price of the watch was $175.